

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID GORDON CANTRELL,

Plaintiff,

v.

ADMINISTRATIVE SUBDIVISIONS AND
THE STATE OF WASHINGTON ,

Defendants.

Case No. C07-5568FDB/JKA

REPORT AND
RECOMMENDATION

**NOTED FOR:
March 14, 2008**

This 42 U.S.C. § 1983 action has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 (b) and local Rules MJR 3 and 4. Plaintiff has filed a proposed complaint and applied for *in forma pauperis* status (Dkt. # 1). The court sent an Order to Show Cause to plaintiff because it appeared plaintiff had on three or more occasions had actions dismissed as frivolous, malicious, or for failure to state a claim. Mr. Cantrell is a prisoner and 28 U.S.C. § 1915 (g) applies to him (Dkt. # 6). That order gave Mr. Cantrell until January 24, 2008 to file a response (Dkt # 6).

Mr. Cantrell has not filed a response to the Order to Show Cause. Instead he has filed a "Motion to Vacate Sentence." (Dkt. # 7). In this pleading Mr. Cantrell states the defendants have

1 not appeared in this action. It is not clear what relief he is seeking in his motion. (Dkt. # 7).

2 As outlined in the Order to Show Cause, Mr. Cantrell has on at least three occasions had
3 cases dismissed because he failed to state a claim or because the cases were frivolous and malicious.
4 Those cases are C93-1680CRD, C03-344C, and C07-5272RJB.

5 Mr. Cantrell is a prisoner. 28 U.S.C. 1915 (g) precludes a grant of *in forma pauperis* status
6 to Mr. Cantrell unless he is in imminent danger of serious physical injury. Mr. Cantrell has not pled
7 any physical danger and his pleadings are indecipherable.

8 Based on the above, the Court should deny plaintiff's application to proceed *in forma pauperis*.
9 Mr. Cantrell has failed to respond to the court's order to show cause. The court should direct Mr. Cantrell
10 to pay the filing within 30 days of the court's order and if he fails to pay the filing fee the clerk should be
11 directed to dismiss this matter.

12 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the
13 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R.
14 Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal.
15 Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the
16 clerk is directed to set the matter for consideration on **March 14, 2008**, as noted in the caption.

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18 DATED this 19 day of February, 2008.

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20 /s/ J. Kelley Arnold
21 J. Kelley Arnold
22 United States Magistrate Judge
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